COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 258 of 2004

The Oriental Insurance Co. Ltd.…. **Appellant.**

Versus

Ashish Aggarwal
and others. ……**Respondents.**

Coram: Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 25-5-2004 passed in M.A.C. Case No. 166 of 2002, Ashish Aggarwal Vs. Sri Shailendra & others, by Motor Accident Claims Tribunal/Add. District Judge, III F.T.C. Dehradun ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.16,48,800/- as compensation along with interest @ 8% per annum, as mentioned in the impugned order, in favour of the claimant-respondent against the O.P. No. 2-appellant under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that it was case of contributory negligence; that the award by the Tribunal towards medical expenses has been made without evidence on record, thereby awarding amount of Rs.2,00,000 on no count/head and the Tribunal has failed to appreciate the evidence on record.

Brief facts, giving rise to the present appeal, are that in the night intervening 26/27-11-2001, the claimant Ashish Agarwal along with his father was going to the parking place out side the Junior Engineers Club Dak Pathhar where their motor cycle was parked. In the meantime, the claimant was hit by a Jeep No. UP 21-

H-6900 being driven rashly and negligent by its driver (O.P.No.1) with the result the claimant sustained grievous injuries on different part of his body and was badly crushed in the said accident. The injuries was rushed to C.M.I. Dehradun for treatment and since the condition of the claimant-injuries was serious, he was admitted to Apolo Hospital Delhi. The claimant was consequently operated upon by paned of doctors time and against and for several days he was put in the Incentive Care Unit. During long expensive treatment, the claimant has to incur heavy expenses at different hospitals, therefore, claim petition has been preferred for compensation worth Rs. 23,65,000/- along with interest under Section 166 of the Act. The opposite parties have contested the claim petition by filing their written statements. The O.P.No.3-appellant in its written statement (18-B) has contended that the the claimant ought to have filed F.I.R. of the accident and evidence in respect of holding of valid driving licence by the driver O.P.No.1 and other valid papers in respect of the offending vehicle/Jeep. It has denied that the Jeep in question was involved in the accident. It has also been denied that the O.P.No.1 was the driver of the offending jeep at the relevant time. It has also been denied that the claimant has spent the expenditure as mentioned in the petition. Plea of collusion between the claimant and the owner of the jeep has also been taken, therefore, the Insurance Company is entitled to defend the case under Section 170 of the Act on all the grounds available to the owner of the vehicle.

On the pleadings of the parties, the learned Tribunal has framed three Issues in the case, Issue No.1 related to the rash and negligent driving by the driver of Jeep No. U.P. 21 H-6900 resulting into grievous injuries to the claimant. Issue No. 2 related to the permanent disability to the claimant and Issue No. 3 related to the relief/compensation. In support of his case, the claimant has filed as many as 276 documents per list 28-C1, which included disability certificate of the claimant-injuries, photographs, medical prescriptions, bills of expenditures, etc. of Apolo Hospital, Delhi, C.M.I. Hospital Dehradun, Tulsi Hospital Hardwar, Bhandari

Hospital, Vikasnagar, Deepak Memorial Hospita Shahdara, Himalayan Institute of Jolly Grant, Dehradun, etc. In addition to it, carbon copy of written report has also been filed on record. The claimant has produced two witnesses in the case, namely Ravi Kant Garg, P.W.1 and Sri Arun Kumar P.W.2 From the said of O.Ps. Nos. 1 and 2, photo-copies of driving licence and Insurance Cover Note have been filed per list 24-C2. Ultimately, the learned Tribunal has come to the conclusion that the motor accident resulting into grievous injuries to the claimant was caused due to rash and negligent driving by the driver (O.P.No.1) of Jeep No. UP 21 H-6900. It has also been held by the Tribunal has in the said accident, the claimant has become permanently disabled. On Issue No. 3 relating to compensation and relief, the learned Tribunal has observed that the offending Jeep was insured with the Oriental Insurance Company, the appellant. It has also been observed that the driver of the jeep involved in the accident was holding a valid driving licence on the date of accident. Finally, the learned Tribunal after dealing with all relevant evidence on the point of permanent disability and expenses incurred on the treat of the claimant and all other factors including loss of amenities of live, expectation of life, inconvenience, hardship, discomfort, mental stress, etc. has awarded sum of Rs. 16,48,8000/- along with interest @ 8% per annum in favour of the claimant-respondent No.1 against the Insurance Company-appellant.

We have heard learned counsel for the appellant-Oriental Insurance Company, Sri Tanveer Alam Khan, as well as learned counsel for the claimant-respondent no.1, Sri Ramji Srivastava, and have carefully gone through the entire record of the court below including the impugned judgment and award.

In this appeal, the learned counsel for the appellant-Insurance Company has vehemently hammered the findings of the learned Tribunal on the point of quantum of award. Application under Section 170 of the Motor Vehicles Act was allowed by the

Tribunal. The ground to challenge the quantum in available to the appellant-Insurance Company under Section 173 of the Act, therefore, it has been submitted before us that in this case, a child aged only 7 years has suffered injuries and compensation of Rs. 16,48,800/- has been awarded. It has been submitted that the award of compensation towards medical expenses of Rs. 7,98,000/- has not at all been supported by bills and vouchers on record, therefore, the learned Tribunal has fallen into an error apparent on the fact of record, therefore, the appeal deserves to be allowed and the impugned order is liable to be modified. We have considered the submissions made by the learned counsel for the appellant with the help of the record of the learned Tribunal. From a close scrutiny of the impugned judgment and award, we find that the Tribunal has determined the amount of medical expenses at Rs.7,98,8000/-. Then the Tribunal ha awarded a sum of Rs. 1,50,000/- towards pain and suffering. Then the learned Tribunal has assessed various aspects regarding loss of amenities of life, damages for loss of expectation of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in the life of the claimant and has awarded a sum of Rs. 5,00,000/-(five lacs) towards those counts. Admittedly, in the present case, a child aged 7 years only has sustained permanent disability. The Tribunal has already assessed sum of Rs. 1,50,000/- towards pain and suffering. It appears that while assessing loss of amenities of life, loss of expectation of life and hardship, the Tribunal has again made award towards mental stress, frustration, thereby granting Rs. 5,00,000/- on those counts. Considering the entire facts and circumstances of the case that in the present case, a child aged 7 years has suffered permanent disability and the fact that the Tribunal has already assessed damages towards pain and suffering to the tune of Rs. 1,50,000/- in paragraph *28 of the impugned judgment*, we are of the view that a sum of Rs. 3,00,000/-(three lacs) instead of Rs. 5,00,000/-(five lacs) as held in *para 29 of the impugned judgment*, will be a just and proper amount towards loss of amenities of life, etc. In addition to it sum of Rs. 2,00,000/- has been awarded towards future medical expenses. Rest of findings

of the learned Tribunal shall remain undisturbed. Accordingly, the claimant-respondent no.1 is entitled to sum of ***Rs. 14,48,800/-*** instead of Rs. ***16,48,800***/-along with interest @ 8% per annum as compensation. To this extent alone, the impugned award shall stand modified.

No other point was urged or argued before us in this appeal.

In the result, the appeal is partly allowed. The judgment and award, under appeal is modified to the above extent. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal for being paid to the claimants.

(B .S.Verma, J.) **(P.C. Verma, J.)**

21-09-2004
RCP